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Attorneys for Defendants

CITY OF SANTA ROSA; RICH CELLI, an individual and Officer of the  
SANTA ROSA POLICE DEPARTMENT; TRAVIS MENKE,  
an individual and Officer of the SANTA ROSA POLICE DEPARTMENT;  
and PATRICIA SEFFENS f/k/a PATRICIA MANN, an individual  
and Officer of the SANTA ROSA POLICE DEPARTMENT

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PATRICIA DESANTIS, et al.,

Plaintiffs,

v.

CITY OF SANTA ROSA, et al.,

Defendants.

Case No. C 07-3386 JSW

**MOTION *IN LIMINE* NO. 5:  
EXCLUDE EVIDENCE OF RICHARD  
DESANTIS' HISTORY OF MENTAL  
HEALTH ASSESSMENT,  
EVALUATION, TREATMENT AND  
PROGNOSIS DURING THE  
LIABILITY PORTION OF THE TRIAL**

Hon. Jeffrey S. White

Pretrial Conference: July 2, 2012  
Time: 2:00 p.m.  
Cttrm: 11, 19<sup>th</sup> Floor

Trial Date: September 4, 2012

Defendants anticipate that plaintiffs may seek to introduce evidence or testimony regarding Richard DeSantis' history of mental health assessment, evaluation, treatment and prognosis. Defendants hereby move this Court for an order excluding any and all evidence of Richard DeSantis' history of mental health assessment, evaluation, treatment and prognosis during the liability phase of the trial because evidence of his medical history is not probative of any fact supporting proof of any element of the claim against the defendants and is hearsay.

The only relevant information evidence related to this issue is information that was

1 known to the officers at the time of the incident based on any statements that were made by  
2 Patricia DeSantis to the dispatch and relayed to the officers.

3 For Fourth Amendment purposes, the inquiry is whether the officers' action are  
4 objectively reasonable in light of the facts and circumstances *confronting them*. *Graham v.*  
5 *Connor* 490 U.S. 386, 394 [emphasis added]. Three core factors subject to objective standards  
6 are examined: "the severity of the crime at issue, whether the suspect poses an immediate threat  
7 to the safety of the officers or others, and whether he is actively resisting arrest or attempting to  
8 evade arrest by flight." *Bryan v. McPherson* 630 F.3d 805, 826 (9th Cir. 2010).

9 Nothing about the *Graham* formulation and the *Bryan* discussion inquires into mental  
10 health of the individual being detained because the fact finder or court assesses the officers'  
11 conduct by *objective* metrics of what was the factual foundation for the act of the officer.  
12 *Graham* and *Bryan* do not require evidence of the subjective impressions or speculations about  
13 the inner workings inside the mind of the individual being detained. For *Graham* and *Bryan* to  
14 be meaningful, and to be meaningful gauge of the constitutionality of the conduct of officers,  
15 officers must act based on information available to them, and what is knowable, and not based on  
16 speculation about the emotional state of the individual being detained during the moments of  
17 interaction between officer and the individual. For the purposes of the Fourth Amendment,  
18 Richard DeSantis' history of mental health assessment, evaluation, treatment and prognosis is  
19 irrelevant.

20 For Fourteenth Amendment purposes, Richard DeSantis' history of mental health  
21 assessment, evaluation, treatment and prognosis is also not probative of any fact supporting the  
22 proof of any element of any claim presently before the court. To wit, the Fourteenth  
23 Amendment issue is whether the use of force in this matter was "unrelated to a legitimate law  
24 enforcement purpose" (*County of Sacramento v. Lewis* 523 U.S. 833 (1998)). As in the Fourth  
25 Amendment analysis, the sole focus is upon the acts of the officers founded upon the facts and  
26 circumstances they confronted, and the analysis excludes the state of mind of Richard DeSantis  
27 whether historically or otherwise. Stated another way, the law does not require Officers Mann  
28 and Menke, an Sgt. Celli to have been omniscient about the state of mind of Richard DeSantis, or

1 to have guessed about his intentions. It is a sufficient law enforcement purposes that they  
 2 confronted the totality of the circumstances that can be partially described as an "active shooter"  
 3 scenario culminating in Mr. DeSantis' ignoring demands that he "Lie down" and instead  
 4 charging directly in a sprint at two officers that forced them both to shoot when he was about 10-  
 5 15 feet from the officers.

6 Additionally, the courts have acknowledged that there is no separate or different legal  
 7 standard to evaluate police conduct in situations in which they are dealing with mentally  
 8 disturbed individuals. *Deorle v. Rutherford*, 272 F.3d 1273, 1283 (9<sup>th</sup> Cir. 2000); *Blanford v.*  
 9 *County of Sacramento*, 406 F.3d 1110 (9<sup>th</sup> Cir. 2005). The specifics of any alleged mental illness  
 10 are not relevant to the issues in the liability phase except to the extent of information actually  
 11 provided to the officers.

12 Admission of such evidence may unduly influence the jury to defendants' prejudice by  
 13 creating additional sympathy for the decedent.

14 Defendants respectfully request this Court's order that evidence of Richard DeSantis'  
 15 history of mental health assessment, evaluation, treatment and prognosis be excluded during the  
 16 liability phase of the trial.

17 Such evidence may be admissible with respect to the damage claims and claims for future  
 18 loss of earnings and the loss of familial relationship.

19 Dated: June , 2012

OFFICE OF THE CITY ATTORNEY

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 Caroline L. Fowler, City Attorney  
 John J. Fritsch, Assistant City Attorney  
 Attorney for Defendants

## 24 ORDER

25 Satisfactory proof having been made, it is hereby ordered as follows:

- 26 1. that evidence of Richard DeSantis' history of mental health assessment,  
 27 evaluation, treatment and prognosis be excluded during the liability phase of the  
 28 trial.

2. All parties' counsel shall caution, warn and instruct their clients and their witnesses from attempting to introduce such evidence during the trial of this matter, and from referring to the existence of such evidence during the liability phase of the trial of this matter.

Dated: July \_\_, 2012

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Hon. Jeffrey White, Judge  
United States District Court

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17 Such evidence may be admissible with respect to the damage claims and claims for future  
 18 loss of earnings and the loss of familial relationship.

19 Dated: June 12, 2012

OFFICE OF THE CITY ATTORNEY



Caroline L. Fowler, City Attorney  
 John J. Fritsch, Assistant City Attorney  
 Attorney for Defendants

## ORDER

25 Satisfactory proof having been made, it is hereby ordered as follows:

- 26 1. that evidence of Richard DeSantis' history of mental health assessment,  
 27 evaluation, treatment and prognosis be excluded during the liability phase of the  
 28 trial.